

TITLE 326 AIR POLLUTION CONTROL BOARD

LSA Document #98-95

SUMMARY/RESPONSE TO COMMENTS FROM THE THIRD COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from May 1, 1998, through May 21, 1998, on IDEM's proposed rule language. IDEM received comments from the following parties:

Bruce Carter Associates	(BCA)
Chrysler Corporation	(CC)
Eli Lilly & Company	(ELC)
General Electric Company	(GE)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: The definition of “modification” should be revised to only include reconstruction that increases the potential to emit. 326 IAC 1-2-42(3) should be revised to read:

“(3) Reconstruction of one (1) or more existing emission units that have **increases** the potential to emit **of any** regulated air pollutants.” (GE)

Response: IDEM agrees and has revised the language accordingly.

Comment: The current language under 326 IAC 1-2-65 defines reconstruction as “an emission unit shall be considered to be reconstructed when the fixed capital cost of the new components exceed fifty percent (50%) of the fixed capital cost of a comparable entirely new emission unit.” There are several new source performance standards (NSPS), including Subpart OOO, Subpart VV, and Subpart XX, have identified certain replacement parts that should not be accounted for in determining the new component cost for the affected source category. The proposed rule language is consistent with the federal definition of reconstruction and should include a qualifying statement to reflect the exceptions in federal rules. (BCA)

Response: IDEM agrees and has included language to address federal rules.

Comment: The emission thresholds for permitting requirements are in tons per year, except for sources emitting volatile organic compounds (VOCs) and subject to 326 IAC 8 provisions that have a threshold expressed in pounds per day. The permitting rules are based on potential to emit which is an annual calculation, but the applicability under 326 IAC 8 is based on the potential emissions definition. It appears that the reasons to keep the pounds per day are to maintain consistency and to alleviate any concern that a source may construct a new source or modify an existing source that is subject to 326 IAC 8 without permitting review. A source or a

modification of a source that is subject to the provisions of 326 IAC 8 is subject to the rules and must comply with those rules regardless of whether a permit or permit revision is issued. There appears to be little, if any, benefit to having the different permitting threshold and all of the thresholds should be in tons per year to be consistent. (ELC)

Response: IDEM believes that there are situations where it is appropriate to have different permitting thresholds, such as situations where air quality or adequate compliance monitoring may be of concern. However, IDEM will provide the Air Pollution Control Board with rules that replace the pounds/day threshold for volatile organic compounds with a tons/year threshold and more specifically addresses the types of sources or modifications subject to a particular threshold.

Comment: The rules should provide that an owner or operator of a Part 70 source may undertake emergency and preventative maintenance activities necessary either for safety purposes or to protect equipment or the environment without having to first obtain approval from the commissioner. The currently proposed rules have deleted key language that previously provided for such actions by an owner or operator. These provisions should be restored or the definition of “modification” should be further modified so an emergency reconstruction or maintenance activity not subject to other requirements is not unnecessarily delayed. (GE) (ELC)

Response: IDEM agrees and has included the same language concerning emergency repair and replacement in 326 IAC 2-7-10.5 that was included under the minor source (326 IAC 2-6.1-6) and FESOP rules (326 IAC 2-8-11.5).

Comment: The current rules provide for certain temporary operations and experimental trials to be exempted from permitting requirements under 326 IAC 2-1-1(b)(3)(C). These provisions should be included in the new rules and should be applicable to all source categories (GE) (ELC)

Response: IDEM agrees and has included the provisions for temporary operations and experimental trials, currently at 326 IAC 2-1-1(b)(3)(C), in the new rules under the exemptions at 326 IAC 2-1.1-3(g).

Comment: It is not clear whether a modification approval issued under 326 IAC 2-7-10.5 is considered a registration, permit, or operating permit revision under 326 IAC 2-1.1-2. There are several other references to registrations, permits, or operating permit revisions in 326 IAC 2-1.1 and without clarification that the 326 IAC 2-7-10.5 “modification approvals” are an operating permit revision the rule could be read as precluding or not addressing Title V source modifications. Either new rule language or a discussion in response to these comments should clarify that obtaining approval under 326 IAC 2-7-10.5 satisfies the requirements set forth in 326 IAC 2-1.1. (GE) (ELC)

Response: The language under 326 IAC 2-7-10.5 is intended to provide Part 70 sources with options for preconstruction approval and either, an approval to construct or an operating permit revision. The language under 326 IAC 2-1.1 has been revised to clarify that no further procedures or approvals are required for sources utilizing 326 IAC 2-7-10.5.

Comment: The use of permitting exemptions as a means of eliminating administrative burdens that have no environmental benefit is supported. The rule contains an appropriate list of such exemptions. (CC)

Response: IDEM agrees.

Comment: 326 IAC 2-1.1-8(a) lists the time the state has allotted for the processing of permit applications. The time allotted is excessive and will cause significant, unneeded delays with important projects. The rule allows for extensions to the processing time by the applicant and the time should be shortened except under exceptional circumstances in which an extension could occur. It is recommended that the two hundred seventy (270) days to process federal NSR permits be shortened to one hundred eighty (180) days and the one hundred twenty (120) days for minor permits be shortened to ninety (90) days. (CC)

Response: The time periods included under 326 IAC 2-1.1-8 are the same time periods that are currently included under 326 IAC 2-5 that became effective state rules in 1993 and were codified by the General Assembly in 1994. The time periods are appropriate maximum timeframes for the types of review that are needed. The office of air management is obligated to refund fees for permit actions that exceed these timeframes and the number of late decisions is currently approaching zero. Decisions are typically made much earlier than the maximum allowed by law.

Comment: The definitions of "Allowable emissions" in 326 IAC 2-2-1 and 326 IAC 2-3-1 should be modified to allow the use of an applicable standard set forth in 40 CFR 63 if that standard is the most stringent standard. (GE)

Response: The definition of allowable emissions comes from the federal new source review rules. The federal definition has not changed and IDEM does not believe that a change is appropriate until the federal regulations that are the basis for 326 IAC 2-2 and 326 IAC 2-3 are revised.

Comment: 326 IAC 2-5.1-1(2) and 326 IAC 2-6.1-2(2) exempt from those rules any sources operating pursuant to a Title V permit, but do not exempt a source that has filed a Title V permit application and is awaiting the issuance of the permit. These provisions should exempt those sources that do not have a final Title V permit, but have filed the permit application. The issue should be clarified in other areas of the new rules, if applicable. (ELC)

Response: Currently, Title V sources awaiting action on a permit application are still subject to the permits and registrations that were issued under 326 IAC 2-1-2 or 326 IAC 2-1-4. The new rules would be not differ from this approach. A new source that did not opt to have a combined construction permit and operating permit issuance under 326 IAC 2-5.1, would operate under the operating permit terms in accordance with 326 IAC 2-6.1 until the Title V permit is issued. If a source would be exempted, it would not have the ability to use the permit revision procedures under 326 IAC 2-6.1-6. This could be detrimental to the source and IDEM believes that the source should operate under an enforceable permit and not the Title V permit application that is

not enforceable. Existing sources would not be subject to the new source provisions of 326 IAC 2-5.1 and 326 IAC 2-6.1-3(d) contains language that states that a Part 70 source that has submitted a Part 70 application has satisfied the requirements of 326 IAC 6.1.

Comment: 326 IAC 2-5.1-3(b) should be changed to accurately refer to the requirement referenced in subsection (a) as follows:

“(b) Any person proposing the construction of a new source and required to prepare an application **obtain a construction permit** under subsection (a), including” (GE)

Response: IDEM agrees and will revise the language accordingly.

Comment: The citation in the last line of 326 IAC 2-5.1-3(e)(5) appears to have a typographical error and should be changed to 326 IAC 2-1.1-3(d)(1) through (33). (GE)

Response: IDEM agrees and will make the change accordingly.

Comment: The language under 326 IAC 2-6.1-6(b)(1) should be clarified as follows:

“(1) the repair or replacement results in a potential to emit for each regulated pollutant that is less than or equal to the potential to emit of the equipment **or** the affected emissions unit. . . .” (GE)

Response: IDEM agrees and will revise the language.

Comment: The language under 326 IAC 2-7-5(16)(B) should be changed to set forth that only necessary monitoring, testing, reporting, and record keeping requirements are to be included in the permit. (GE)

Response: IDEM agrees and will revise the language accordingly.

Comment: The rule language under 2-7-10.5 does not include a provision under current law that allows for an exemption for like kind replacements. This is a crucial provision to streamlining the permitting procedures and should be included as a notice only type change for Part 70 sources. There are several other streamlining options that are available for minor or FESOP sources, but are not available under the proposed rules for Part 70 sources. (ELC)

Response: IDEM agrees that where possible the rules should be consistent across the permitting programs. The rules for Part 70 sources must meet federal requirements under 40 CFR 70 and any changes to the rules must be approved by the U.S. EPA as part of Indiana's Part 70 operating permit program. This situation may cause inconsistencies between the permit programs, but IDEM has worked with the U.S. EPA to provide as much streamlining as possible for Part 70 sources.

Comment: 326 IAC 2-7-10.5(c)(5)(C) should be clarified by stating that the control device is an air pollution control device. (GE)

Response: IDEM agrees and will revise the language accordingly.

Comment: The language under 326 IAC 2-7-10.5(k) is not clear concerning whether an owner or operator of a Part 70 source is required to take further action or if the mentioned incorporation is automatic. The language also mentions “modification approval” and not a permit. The language should clarify the process to be followed. (GE)

Response: IDEM agrees and will attempt to provide clarification where needed.

Comment: The inclusion of the emissions cap concept is supported and will be an effective tool for managing emissions while minimizing any delays in modernizing manufacturing facilities in the state. The option for setting an emissions cap in the context of a prevention of significant deterioration (PSD) review should be retained. This option allows new and totally rebuilt facilities a practical option for creating a cap. There is concern with the rule language under 326 IAC 2-7-20(a)(1). The rule language allows a source to make changes without prior approval, if “the changes are not modifications under any provisions of Title I of the Clean Air Act (CAA).” This could be interpreted to indicate that the emissions cap is not the basis for determining federal new source review (NSR). The rule should be clarified to make clear that the emissions cap is intended to determine federal NSR applicability. (CC)

Response: The definition of a Title I modification is dependent on federal regulations. While it is IDEM’s intention that the emissions cap limit would be the basis for federal NSR applicability, the rules must be consistent with federal regulations and cannot allow for circumvention of those regulations.

Comment: The proposed establishment of emission cap concepts is a positive step and is especially supported for Part 70 sources. Businesses need a mechanism that assists in balancing production, emissions, and timeliness for their processes and it is hoped that IDEM will continue to search for new and innovative ways to use emission caps in a way that increases flexibility while being protective of the environment and public welfare. (GE)

Response: IDEM agrees.

Comment: The terminology concerning emissions caps should be revised to avoid potential confusion among sources with plants in several states and to have national consistency. Emission caps should be referred to as plant-wide applicability limits (PALs). This term is used by the U.S. EPA and other states. (BCA)

Response: IDEM agrees that the term PALs is used at the federal level and a definition of a PAL will be included under 2-1.1-1. IDEM is retaining the term emissions cap and emissions cap program because the proposed rules would allow for the establishment of emissions caps at a lower level than the entire plant.

Comment: The rule has been structured to separate different permit program requirements into separate rules or sections. The rule language associated with PALs should be incorporated into a separate section to reduce confusion for the sources that are interested in using this option.

(BCA)

Response: IDEM agrees and has placed the provisions for emissions cap programs under the general provisions, 326 IAC 2-1.1.

Comment: The current rule language only provides the option for a PAL to be included in a Part 70 or FESOP permit. The rule language should be revised to provide this option for sources with any operating permit whether a state minor operating permit, Part 70, or FESOP. (BCA)

Response: The definition of a PAL as proposed by the U.S. EPA and included at 2-1.1-1(12) and the provisions under 326 IAC 2-1.1-12 require the PAL to be federally enforceable. The two permit programs that are available at this time are the Part 70 and FESOP programs. In addition, the establishment of an emissions cap program that may include a PAL requires more effort during the permit application review and IDEM believes that the FESOP program is more appropriate to account for the increased effort associated with emissions caps or PALs. IDEM has revised the applicability of the FESOP program to allow sources that are not subject to Part 70 to apply for a FESOP.

Comment: The rule language should be clarified to state that construction of new emission units or installation of equipment is not subject to state or federal NSR as long as the source's activities do not cause emissions above the pre-established emissions cap. (BCA)

Response: IDEM agrees and will attempt to clarify the language where necessary. While the language does refer to preconstruction or modification approvals or operating permit revisions that include both state and federal new source review, the applicability of federal new source review is dependent on federal regulations.

Comment: The notification requirements for changes that are made under a PAL should be streamlined and simplified. The items to be required should include a description of the physical or operational changes, the units affected, the proposed schedule for such change, new rule applicability, other non-PAL criteria pollutants affected, and a certification that the change will not result in emissions greater than the PAL. (BCA)

Response: IDEM will review the notification requirements and will attempt to simplify the requirements.

Comment: The rule language under 326 IAC 2-5.1-3(g)(2) states that operating permit revisions are not necessary for sources with modifications, reconfigurations, or other "minor physical changes" that do not result in an increase in the potential to emit. IDEM should define "minor physical changes" to avoid conflicts that may arise due to differing opinions or interpretations between IDEM and regulated industries. (BCA)

Response: IDEM agrees and will provide a definition under 326 IAC 2-1.1-1.

Comment: The applicability of the proposed rules to Part 70 sources, while seemingly

addressed in the rules, is complicated and not straight forward. Guidance or explanatory information concerning the new rules and the Part 70 permit process would be valuable and a flow diagram concerning source modification would also be valuable. (GE)

Response: IDEM agrees and anticipates that guidance and outreach concerning the new rules will be needed and necessary.

Comment: The rule language under 326 IAC 2-13-1(a) is unclear concerning whether or not this applies to sources that have submitted a Part 70 permit application but do not have an effective Part 70 permit. IDEM should clarify that the owner or operator of a Part 70 source with registrations, construction permits, or operating permits may apply to modify the source under 326 IAC 2-13. (GE)

Response: IDEM does not believe that the clarification is necessary. The proposed rule language under 326 IAC 2-6.1-3(b) recognizes the validity of the current operating permits, in that, the source is not required to apply for a new operating permit until the current operating permit is about to expire. The current and the new rules both recognize that a previous permit can continue to be valid, even after the expiration date, if the owner or operator has submitted a permit renewal application has been submitted in accordance with the rules. A Part 70 source would have been subject to the current operating permit requirements and should have been issued a permit. The ability to use 326 IAC 2-13 is based on having a valid operating permit and so, whether or not a source is subject to Part 70 is not critical, the possession of a valid operating permit is the criteria that must be met.

Comment: The proposed language under 326 IAC 2-13 should be changed to clarify that a source can qualify under 326 IAC 2-13-1 when constructing a new emissions unit at an existing source. This is an important need for businesses that need to quickly begin construction of a new unit not previously covered by an operating permit. The following changes are suggested:

“This section applies to any person who operates an existing source under valid operating permits issued by the commissioner and who proposes to modify a source **or construct a new emission unit at the existing source** and such modification **or construction** requires an operating permit revision **or other approval by the commissioner in accordance with this article**, excluding the following:” (GE)

Response: While the IDEM believes that the proposed revisions to the definition of a modification under 326 IAC 1-2-42 along with the phrase “modify the source” would include construction of new emissions units, the language will be revised to provide better clarity.

Comment: There is a discrepancy under 326 IAC 2-13-1(i)(2). The verbage states “Thirty”, but the number is “(31)”. (GE)

Response: The language should read “Thirty-one” and will be corrected.

Comment: Because a significant number of sources will not be receiving their final Part 70

permits for some time, the rules should provide separate provisions for those sources that have not yet received a final permit. (ELC)

Response: IDEM agrees and has provided new language under 326 IAC 2-7-10.5 addressing permitted and unpermitted sources.

Comment: The rules under 326 IAC 2-7-10.5 should provide an alternative permitting process. The rules provide significant streamlining but the provisions requiring the signature of a responsible official, even though the source may not have received a final Part 70 permit, is burdensome. An alternative procedure should be provided where the responsible official's signature is not required. (ELC)

Response: IDEM has revised the rule language to allow less stringent procedures for a source that is only requesting an approval to construct.

Comment: The two (2) startup notifications under 326 IAC 2-7-10.5 should be deleted. The source will be notifying the agency with the application of the modification and again when an administrative amendment to the Part 70 permit is requested. If the language is retained, the source will be providing four (4) notifications.

Response: IDEM agrees and will delete the notification language under 326 IAC 2-7-10.5.

Comment: The rule language under 326 IAC 2-7-5(11) and (16) should include references to 326 IAC 2-7-10.5 to clarify that source modifications are not required for changes under an emissions cap or in accordance with an advance approval. (ELC)

Response: IDEM agrees and will revise the language accordingly.

Comment: In several sections of the proposed rules, the rules refer to the trading of emission increases and decreases as the primary characteristic of emissions cap permits. This is an antiquated view of emission caps and should be deleted. In most cases, sources will probably just adjust the processes and emissions to comply with the cap and will not actually trade emissions. (ELC)

Response: IDEM agrees that the emissions cap program is not solely dependent on emission trading and will attempt to clarify the language accordingly.

Comment: The proposed language under 326 IAC 2-8-10(a)(11) requires an administrative amendment for changes under an emission cap at FESOP sources. The proposed language addressing emission caps already requires notification under 326 IAC 2-8-15(a)(3) and the administrative amendment provisions are redundant and burdensome. (ELC)

Response: IDEM agrees and will delete the language under 326 IAC 2-8-10(a)(11).